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5 MICHELLE ROBERSON,

6 Plaintiff,

7 v.  
8 KAISER FOUNDATION  
9 HOSPITALS, et al.,

10 Defendants.

11 NO. C04-1043 TEH

12 ORDER GRANTING MOTION  
13 TO SET ASIDE DEFAULT OF  
14 MELODY JAMES

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16 This matter comes before the Court on Defendant's Motion to Set Aside Default filed  
17 on June 8, 2005. Defendant requests that the default against Defendant Melody James be set  
18 aside because there is no evidence that Defendant James has been properly served. However,  
19 Plaintiff concedes that the filing of an amended complaint on September 22, 2005, renders  
20 moot the default entered against Defendant James for failing to respond to the first amended  
21 complaint, which was filed on April 28, 2004. Pl.'s Mem. of P. & A. in Supp. of Pl.'s Mot.  
22 for an Order to Serve Melody James by Publication at 3:21-25. Thus, no oral argument on  
23 Defendant's motion is necessary, and the Court hereby cancels the motion hearing currently  
24 scheduled for Monday, October 3, 2005. Because Plaintiff concedes that the entry of default  
25 against Defendant James is moot, the Court need not reach the merits of Defendant's motion  
26 and makes no finding regarding the sufficiency of evidence of service on Defendant James.  
27 Based on Plaintiff's concession, IT IS HEREBY ORDERED that Defendant's Motion to Set  
28 Aside Default Against Defendant James is GRANTED.

1 The Court will address Plaintiff's motion regarding service of the second amended  
2 complaint on Defendant James after the parties have fully briefed the issue according to the  
3 briefing schedule established by the Civil Local Rules. Unless the Court orders otherwise,  
4 Plaintiff's motion will be heard as noticed on Monday, October 31, 2005, at 10:00 AM.

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6 IT IS SO ORDERED.

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DATED 09/27/05

Thelton E. Henderson

## United States District Court

For the Northern District of California